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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 ALEXANDER TABER,

9 Plaintiff,

10 v.

11 CASCADE DESIGNS, INC., *et al.*,

12 Defendants.

Cause No. C20-1633RSL

ORDER TO SHOW CAUSE

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15 This matter comes before the Court *sua sponte*. On November 5, 2020, defendants
16 removed the above-captioned matter from King County Superior Court on the grounds that
17 plaintiff seeks the recovery of benefits allegedly due under employee benefit plans governed by
18 the Employee Retirement Income Security Act of 1974 (“ERISA”). Dkt. # 1 at 2. A review of
19 the underlying complaint shows, however, that plaintiff has asserted state law wage claims and
20 seeks damages under tort and contract law. Dkt. # 1-1.

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22 Removal is proper if there is a federal question, and the plaintiff’s well-pleaded complaint
23 ordinarily determines whether a federal question is at issue. *Franchise Tax Bd. v. Construction*
24 *Laborers Vacation Trust*, 463 U.S. 1, 9-10 (1983); *Lyons v. Alaska Teamsters Employer Serv.*
25 *Corp.*, 188 F.3d 1170, 1171 (9th Cir. 1999). Presenting a federal question as a defense, such as
26 ERISA preemption, “does not appear on the face of a well-pleaded complaint, and, therefore,
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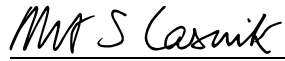
28 ORDER TO SHOW CAUSE - 1

1 does not authorize removal to federal court.” *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58,
2 63 (1987). If, however, adjudication of the state law claim would necessarily give rise to a
3 conflict with ERISA or the state law claim is encompassed within the scope of the civil
4 enforcement mechanisms of the federal law, the claim is deemed federal and justifies removal
5 even if the federal issue is first raised as a defense and does not appear on the face of the
6 complaint. *Abraham v. Norcal Waste Sys., Inc.*, 265 F.3d 811, 819 (9th Cir. 2001); *Lyons*, 188
7 F.3d at 1172.

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9 Here the Complaint alleges twenty-six claims related to defendants’ alleged withholding
10 of wages in violation of Washington law, accounting and reporting errors, and plaintiff’s
11 retaliatory discharge. The Complaint does not facially assert any ERISA claims, and there does
12 not appear to be any request for recovery from or benefits under an ERISA benefits plan. It
13 appears, therefore, that this Court has original subject matter jurisdiction permitting removal
14 only if ERISA completely preempts one or more of the state law claims asserted.
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17 For all of the foregoing reasons, defendants are ORDERED TO SHOW CAUSE, on or
18 before November 19, 2020, why this matter should not be remanded to state court. Defendants
19 have the burden of showing that one of two circumstances exists, namely that “(1) ERISA
20 expressly preempts the state law cause of action under 29 USC § 1144(a) (*i.e.* “conflict
21 preemption”) [or] (2) that cause of action is encompassed by the scope of the civil enforcement
22 provision of ERISA, 29 USC § 1132(a) (*i.e.* “displacement”). *Abraham*, 265 F.3d at 819.
23 Plaintiff may file a response by November 26, 2020. The Clerk of Court is directed to note this
24 Order to Show Cause on the Court’s calendar for Friday, November 27, 2020.
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1 Dated this 9th day of November, 2020.

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3 Robert S. Lasnik
4 United States District Judge
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